IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 57 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
MANSUKHLAL K THOBHANI & 1 - Defendant(s)

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Appearance :
MR AY KOGJE, AGP for Appellant(s) : 1,
MR VIREN G DAVE for Respondent(s) : 1

..... - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 19/12/2006

ORAL JUDGMENT

1. Shri A.Y. Kogje, learned AGP for the appellant, Shri Viren G. Dave, learned counsel for the respondent no.1 under the authority of Shri Y.S.

Lakhani. Parties are heard.

2. The brief facts necessary for disposal of the present appeal are that the respondent-plaintiff filed Regular Civil Suit No. 64/87 in the court of the learned Civil Judge [Senior Division], Porbandar against the defendant seeking declaration of title and permanent injunction against the defendants restraining them from auctioning his interest in the property known as “Thobhani Oil Mills”.

3. Short facts which can be further shortened are that there were certain recoveries of sales tax to be made by the department from Karsandas Thobhani, father of the present plaintiff. As the said amount was not paid by the said Karsandas Thobhani, the government started proceedings under the Bombay Land Revenue Code, issued notices for making recovery of the amount as arrears of land revenue. The plaintiff submitted that the property known as “Thobhani Oil Mills” was jointly purchased by him and his deceased father on 12.12.78. On 1.7.87, the plaintiff's father expired and thereafter, notices for recovery etc. were issued. On 28.7.87, under Exhs. 29 and 30, recovery orders

were made. The plaintiff, apprehending seal of his property had filed the suit and prayed for the above-referred reliefs.

4. The defendant appellant appeared before the trial court and submitted that the recovery was in accordance with law, the proceedings under the Bombay Land Revenue Code for recovery of the tax amount as arrears of land revenue were also justified. They also submitted that in view of Section 47A read with Section 64 of the Gujarat Sales Tax Act, 1969, the suit before the Civil Court was not maintainable.

5. Learned trial court, after recording the evidence and hearing the parties held that the present plaintiff had 50% [half share] in Thobhani Oil Mills and to the extent of the plaintiff's share, the government was not entitled to take any action. It accordingly issued declaration and also restrained the respondents from interfering with the property of the plaintiff.

6. Being aggrieved by the said judgment and decree, dated 26.7.89, passed by the learned Civil Judge [Senior Division], Porbandar in Regular Civil Suit No. 64/87, the present appellant filed

Regular Civil Appeal No. 32/89 which came to be dismissed by the learned Assistant Judge at Porbandar on 13.2.90. The State now is before this Court.

7. The appeal has been admitted for hearing the parties on the following substantial questions of law.

"[i] Whether in the facts, and circumstances of the case both the lower courts have committed an error in holding that civil court has jurisdiction to entertain and decide the suit of the present value?

[ii] Whether in the facts and circumstances of the case, both the lower courts erred in holding that notice of attachment under Section 152 and Section 200 of the Bombay Land Revenue Code is illegal ultra vires, null and void to the extent of the share of the plaintiff?"

8. Shri A.Y. Kogje, learned AGP for the appellant submits that from the very language of Section 64 of the 1969 Act, it would clearly appear that the Civil Court would have no jurisdiction to deal with or decide any question which the Sales

Tax Tribunal/Sales Tax authorities are empowered to deal with or decide. According to him, as the recoveries are sought to be made under the provisions of the Gujarat Sales Tax Act,1969, specially under Section 47A of the Act, the Civil Court would have no jurisdiction. Referring to sub-section [2] of Section 47A, it is submitted that in view of sub-section [2] of Section 47A, an order made under Section 64 is to be deemed to be an order passed under the Act, Civil Court would have no jurisdiction.

9. Learned counsel for the respondent no.1 on the other hand, has submitted that the Civil Court had absolute jurisdiction to grant a declaration and injunction, his further submission is that except the Civil Court, no other authority or Tribunal could grant a declaration.

10. Section 47A refers to special powers of Sales Tax authorities for recovery of tax as arrears of land revenue. It does not give any further power to the Sales Tax authorities to grant declaration or issue injunction. It simply authorises the officers etc. for effecting recovery of the amount of tax, penalty or interest due from any dealer or other person by

or under the provisions of this Act, or under any earlier law, as arrears of land revenue. When recovery is sought to be made, it is always made against a person who is a party to the assessment proceedings. If such person is aggrieved by the assessment order or any other order, then he can take up the matter in an appeal or a revision to the Tribunal or can make a request to the Tribunal to refer the case to the High Court. Where a person is not a party to the proceedings and his property is being attached and sold in recovery, which is otherwise to be effected against someone else, then such person's right would not be adversely affected by Section 47A of the Gujarat Sales Tax Act.

11. Section 64 on which extra strong reliance is placed reads as under:-

> **"64. Bar of jurisdiction of Civil Courts.**
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> Save as provided by section 69--
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> [a] no Civil Court shall have jurisdiction to deal with or decide any question which the Tribunal, the **Commissioner** or any

officer appointed to assist him is empowered to deal with or decide by or under this Act and no injunction shall be granted by any Civil Court in respect of any action taken or to be taken in pursuance of any power by or under this Act;

[b] no assessment made and no order passed under this Act or the rules made thereunder by the Tribunal, the Commissioner or any officer appointed to assist him shall be called in question in any Civil Court."

According to Section 64, no Civil Court shall have jurisdiction to deal with or decide any question which the Tribunal etc. are empowered to deal with or decide by or under the Act and no injunction shall be granted by any Civil Court in respect of any action taken or in pursuance of any power by or under the Act. A casual reading of Clause [a] of Section 64 may support the argument raised by the learned counsel for the government, but it is to be seen that the bar would apply to a case where some question or any question could be decided by the Tribunal, Commissioner or some other

officer. Undisputely, the Tribunal or Commissioner or any other authority under the Act would have no powers to grant declaration or issue injunction. So far as the question of grant of injunction at the instance of the assessee, who has faced the proceedings and is apprehending recovery is concerned, cannot come to the Civil Court and ask for injunction. In a case like present where a person was never a party to the proceedings nor his property was involved nor any tax liability was fastened upon his shoulders nor any penalty etc. were imposed upon him then such person would always be entitled to file a suit and seek declaration in his favour that to the extent of his property, the authorities under the Act would have no right to proceed further. Section 64 is to be read in its true perspective, it does not put an absolute ban on the right and authority of the Civil Court to entertain the suit.

12. It is trite to hold that exclusion of the jurisdiction of a Civil Court would not be readily inferred. If there are specific provisions which cover a particular eventuality, then only the Court would hold that Civil Court

would have no jurisdiction. A general provision cannot be applied to all types of cases.

13. In the present case, the Civil Court did have jurisdiction to entertain the suit and grant relief as prayed for by the plaintiff.

14. As the first question is answered against the interest of the State Government, the learned counsel for the State does not press the second question.

15. The appeal deserves to and is accordingly dismissed. No costs. Interim relief, if any, is vacated.

16. Let a decree be framed accordingly.

[R.S. GARG, J.]

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